

UNITED STATES DISTRICT COURT
for the
District of New Jersey

MICHAEL K. ORGERA

)

Petitioner

)

v.

)

NEW JERSEY DEPARTMENT OF CORRECTIONS

)

)

Case No.

(Supplied by Clerk of Court)

Respondent
(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**Personal Information**

1. (a) Your full name: Michael Keith Orgera
(b) Other names you have used: none
2. Place of confinement:
(a) Name of institution: Northern State Prison
(b) Address: 168 Frontage Road, P.O. Box 2300
Newark, NJ 07114
(c) Your identification number: 677390G
3. Are you currently being held on orders by:
 Federal authorities State authorities Other - explain:

If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you:
Superior Court of New Jersey, Ocean County, Toms River, NJ
(b) Docket number of criminal case: OCN-17-000439
(c) Date of sentencing: April 26, 2018
4. Are you currently:
 A pretrial detainee (waiting for trial on criminal charges)
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you:
Superior Court of New Jersey, Ocean County, Toms River, NJ
(b) Docket number of criminal case: OCN-17-000439
(c) Date of sentencing: April 26, 2018
 Being held on an immigration charge
 Other (explain):

Decision or Action You Are Challenging

5. What are you challenging in this petition:
 How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

Pretrial detention
 Immigration detention
 Detainer
 The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
 Disciplinary proceedings
 Other (*explain*): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: New Jersey Dept. of Corrections - Classification

(b) Docket number, case number, or opinion number: _____

(c) Decision or action you are challenging (*for disciplinary proceedings, specify the penalties imposed*):

I was classified with an E-1 override code which was incorrect. Classification of an E-1 override is for a sexual or arson conviction. However, I was not convicted of those offenses.

(d) Date of the decision or action: April 27, 2020

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: New Jersey Dept. of Correction - Classification Dept.

(2) Date of filing: April 28, 2020

(3) Docket number, case number, or opinion number: NSP 20011645

(4) Result: "Overdue"; no response received

(5) Date of result: n/a

(6) Issues raised: Calculation of good time credits while classified with an E-1 Override.

(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

I never received a response to my initial grievance.

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: Same reason as above in
Question No. 8; no response received

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

Yes No

If "Yes," provide:

(a) Date you were taken into immigration custody: _____

(b) Date of the removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals?

Yes No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

If "Yes," provide:

(a) Kind of petition, motion, or application: To remove unwarranted E-1 Override

(b) Name of the authority, agency, or court: Superior Court of New Jersey - Appellate Division

(c) Date of filing: August 3, 2018

(d) Docket number, case number, or opinion number: A-5598-17T3

(e) Result: Reversed and vacated DOC's final decision to remove E-1 Override

(f) Date of result: January 17, 2020

(g) Issues raised: Whether it was arbitrary and capricious for the Dept. of Correction to apply an override based not on my conviction and factual basis but instead of false and dismissed charges.

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Deprivation of due process under the 14th amendment

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

After the Appellate Division reversed the initial E-1 override, I never received the good time credits for the period that I was erroneously held in Medium Custody; approximately 20 months. But for the unwarranted E-1 override, I would have been placed in Minimum Custody and would have received more time off my sentence based on my record while incarcerated.

(b) Did you present Ground One in all appeals that were available to you?

Yes No

GROUND TWO:

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Two in all appeals that were available to you?

Yes No

GROUND THREE:

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Three in all appeals that were available to you?

Yes No

GROUND FOUR:

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

Yes

No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do:

To order the DOC to recalculate my good time credits to reflect the proper deduction off my back number during the months I was wrongly held in medium custody level and thus receiving less time off my sentence.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

May 21, 2020

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: May 21, 2020



Signature of Petitioner

Signature of Attorney or other authorized person, if any